

*Weg and Myers, P.C.*

ATTORNEYS AT LAW  
FEDERAL PLAZA  
52 DUANE STREET, NEW YORK, NEW YORK 10007  
(212) 227-4210  
FAX: 212-349-6702  
WWW.WEGANDMYERS.COM

CONNECTICUT AFFILIATE  
LAW OFFICE OF  
BRIAN D. ROSENFELD  
16 RIVER STREET  
NORWALK, CT 06850  
(203) 853-3888

NEW JERSEY AFFILIATE  
LAW OFFICE OF  
MASELLI-WARREN, P.C.  
600 ALEXANDER ROAD  
PRINCETON, NJ 08540  
(609) 452-8411

October 4, 2011

**VIA ECF**

Honorable Richard M. Berman, USDJ  
United States District Court, Southern District of New York  
500 Pearl Street, Courtroom 21D  
New York, NY 10007

Re: G Investors Holding, LLC. as successors in interest to Stephen Carb as  
Trustee of Lollytogs, Inc. Trust v. Lincoln Benefit Life Company Inc., 09-  
CV-2980 (RMB) (KNF)  
Our File No: 09-103

Dear Judge Berman:

This firm represents Plaintiff in the above-referenced action. Consistent with our September 26, 2011 correspondence "So Ordered" by Your Honor, this correspondence serves as Plaintiff's limited Sur-Reply to address Exhibits "B" and "C"<sup>1</sup> submitted by Defendant as part of its Reply papers in further support of its Motion for Summary Judgment. Defendant, without a connecting affidavit or other authentication documentation, proffered said exhibits in connection with its conclusory pronouncement that James Wilson ("Wilson"), Plaintiff's insurance broker, was advised that conversion rights were not available under the life insurance policies proposed, and ultimately issued, by Defendant. However, a careful review of these exhibits, together with documents inexplicably omitted by Defendant, illustrate that the inferences drawn by Defendant cannot be supported utilizing the proposed exhibits.

---

<sup>1</sup> The September 23, 2011 Declaration of Richard M. Resnik, submitted in further support of Defendant's summary judgment motion, annexes Exhibits "B" and "C" thereto, yet mistakenly refers to said annexed exhibits in the Declaration as Exhibits "A" and "B" respectively. For purposes of this Sur-Reply, Plaintiff will refer to the exhibits in question as they were physically annexed to counsel's Declaration – i.e. Exhibits "B" and "C."

*Weg and Myers, P.C.*

Honorable Richard M. Berman  
October 4, 2011  
Page 2

At the outset, there is simply no evidence by way of testimony or otherwise that Exhibit “B,” a summary of various life insurance policy proposals (contained only in Second Opinion’s file), was sent to and/or received by Wilson as part of the August 18, 1999 facsimile from Second Opinion to Wilson – i.e. Exhibit “C.” Interestingly, a document contained in Second Opinion’s file – document Bates Stamped SO 00107 – is similar to Exhibit “B” as it is a summary of the various life insurance policies proposed for the insured. As set forth below, however, it is questionable as to whether this document was sent to Wilson as well<sup>2</sup>. However, a comparison of SO 00107 with Exhibit “B” reveals that said documents are in fact materially different insofar as the SO 00107 proposal enumerates an additional insurance carrier, North American Company for Life and Health, who provided premium quotes. A copy of Bates Stamped document SO 00107 is annexed hereto as **“Exhibit A.”**

Nonetheless, to the extent Defendant now seeks to utilize SO 00107 in support of its proposition – i.e. that Wilson was apprised in writing of those carriers offering and not offering conversion rights - a serious question of fact exists as to whether document SO 00107 was even sent to Wilson. As reflected on Exhibit “C,” bearing Bates Stamped SO 00104, a total of three pages, including the fax cover sheet, were transmitted to Wilson. This fax cover sheet is then followed in the Second Opinion document production by documents Bates Stamped SO 00105, 00106 and 00107. Consequently, a question arises as to which two documents were transmitted along with the fax cover sheet<sup>3</sup>. Regrettably, there are no fax telltales on any of the documents

---

<sup>2</sup> Neither Defendant’s Exhibit “B” nor SO 00107 were contained in the subpoenaed files of Wilson.

<sup>3</sup> It would be utter speculation for Defendant to suggest that the total number of pages transmitted as reflected on the fax covers sheet is a typographical error.

*Weg and Myers, P.C.*

Honorable Richard M. Berman  
October 4, 2011  
Page 3

produced to assist in answering this question. However, a careful review of Exhibit “C” together with the two documents immediately following in production, documents SO 00105 and SO 00106, would suggest that said two documents were transmitted to Wilson and not SO 00107. A copy of Bates Stamped documents SO 00105 and SO 00106 are annexed hereto as “**Exhibit B.**” Specifically, Exhibit “C” makes explicit reference to an attached spreadsheet as well as the fiscal health of the various proposed carriers, which are consistent with documents SO 00105 (the spreadsheet) and SO 00106 (a document concerning the fiscal health of various carriers). Accordingly, based on a description of the documents transmitted, it is reasonable to conclude that only SO 00105 and SO 00106 – and not Exhibit “B” or SO 00107 - were transmitted to Wilson along with Exhibit “C.” Neither SO 00105 nor SO 00106 contain any discussion, no less any reference, to conversion rights of the various policies.

While at her deposition Laura Lendin of Second Opinion acknowledged transmitting the Exhibit “C” fax cover sheet, Ms. Lendin provided no testimony as to which documents were transmitted together therewith. In fact, although document SO 00107 was inadvertently attached and subsequently presented to Ms. Lendin together with Exhibit “C” as a single document, a careful review of Ms. Lendin’s testimony reflects that she never affirmatively stated to have sent SO 00107 to Wilson as part of the fax transmittal or at any other time. It is further noteworthy that neither Exhibit “B” nor SO 00107 were among the documents contained in Wilson’s file vis-à-vis Plaintiff and/or the insured – a file which was produced pursuant to a subpoena *duces tecum* served upon Wilson by Defendant. Thus, to reassert, absent a scintilla of evidence suggesting that either Exhibit “B” or SO 00107 were sent to and/or received by Wilson, this

*Weg and Myers, P.C.*

Honorable Richard M. Berman

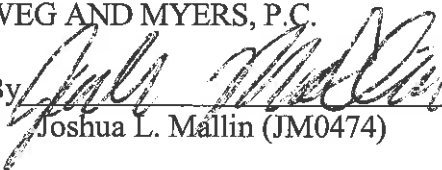
October 4, 2011

Page 4

Court can reasonably conclude, based on a review of the discovery at bar, that a factual issue exists as to whether only SO 00105 and SO 00106 were transmitted to Wilson as part of Exhibit "C" and/or whether Exhibit "B" or SO 00107 were ever received by Wilson. Accordingly, Defendant's inclusion of Exhibit "B" in the record together with the ensuing assertion that Wilson was advised of Defendant's purported lack of conversion rights is not only unsupported by the discovery at bar, but is also misleading to this Court.

Respectfully submitted,  
WEG AND MYERS, P.C.

By

  
Joshua L. Mallin (JM0474)

Cc: **Via E-Mail and Regular Mail**  
Seyfarth Shaw, LLP  
*Attorneys for Defendant*  
620 Eighth Avenue  
New York, New York 10018

# ***EXHIBIT A***

Centennial Insurance &amp; Financial Services

Pick Six Policy Analysis - Page 5 of 5

\*\*\*\*\*

Prepared for SAM GINDI by SECOND OPINION

(Summary of Policies)

August 18, 1999

Florida

Face Amount: 35,000,000 Age Last: 75 Nearest: 75 Male Preferred+ Non-smoker  
 Policy A.M. Best Ratings \*\* Policy

A.M. Best Ratings \*\*

- 1 - Lincoln Benefit Life Company  
 Preferred Plus Level Best Plan 10  
 Renewable to age 95 (age last)  
 10 Year level term with an annual premium of \$742,060.00 guaranteed for 10 years  
 Other Modes: Monthly \$63,075.10, Quarterly \$200,356.21, Semi-annual \$385,871.19  
 A+ X XV (6-8-98)  
 AMB # 06557
- 2 - Midland Life Insurance Company  
 10 Year R & C Term  
 Renewable to age 95, convertible to age 70 (age last)  
 10 Year level term with an annual premium of \$409,560.00 guaranteed for 10 years  
 Other Modes: Monthly \$72,329.40, Quarterly \$208,951.59, Semi-annual \$417,903.18  
 A VIII (2-23-98)  
 AMB # 06710
- 3 - Banner Life Insurance Company  
 Opterm 10 - 10 Year Term  
 Renewable to age 95 (age nearest)  
 10 Year level term with an annual premium of \$421,485.00 guaranteed for 10 years  
 Other Modes: Monthly \$71,879.94, Quarterly \$213,566.09, Semi-annual \$419,957.34  
 A+ VII (4-19-99)  
 AMB # 06466
- 4 - North American Company for Life & Health  
 BR-10 - 10 Year R & C  
 Renewable to age 95, convertible to age 80 (age nearest)  
 10 Year level term with an annual premium of \$355,500.00 guaranteed for 10 years  
 Other Modes: Monthly \$73,193.75, Quarterly \$238,402.50, Semi-annual \$443,344.98  
 A VIII (2-22-99)  
 AMB # 06827
- 5 - Transamerica Occidental Life Insurance  
 Radiometer Super 10  
 Renewable to age 95 (age last)  
 10 Year level term with an annual premium of \$865,970.00 guaranteed for 10 years  
 Other Modes: Monthly \$75,772.37, Quarterly \$229,462.04, Semi-annual \$450,304.38  
 A+ GU XIV (2-18-99)  
 AMB # 06848
- 6 - The Travelers Insurance Company  
 Special T - 10 Year Guarantee  
 Renewable to age 95, convertible to age 80 (age last)  
 10 Year level term with an annual premium of \$927,529.00 guaranteed for 10 years  
 Other Modes: Monthly \$86,264.50, Semi-annual \$482,339.98  
 A+ G IX (9-25-97)  
 AMB # 08429

Legend: \*\* please refer to first page for Guide to A.M. Best Ratings

NOTE: Every effort has been made to assure the accuracy of this information but we cannot guarantee accuracy and are not liable for errors or omissions.

***EXHIBIT B***

## Controlink Insurance &amp; Financial Services

August 18, 1999

## (GUARANTEED Maximum Premiums)

Pick Six Policy Analysis - Page 3 of 5

Prepared for SAM GINDI by SECOND OPINION

Florida

Face Amount: 35,000,000 Age Last: 75 Nearest: 75 Male Preferred+ Non-smoker

Year	Policy 1	Policy 2	Policy 3	Policy 4	Policy 5	Policy 6	
1	Lincoln Benefit Life Company	Preferred Plus Level Best Platinum 10 P+	6	The Travelers Insurance Company	Special T - 10 Year Guarantee	Pf	
2	The Midland Life Insurance Company	Next Generation - 10 Year R & C Term					
3	Banner Life Insurance Company	Optim 10 - 10 Year Term					
4	North American Company for Life & Health	BR-10 - 10 Year R & C					
5	Trensemeria Occidental Life Insurance	Trendsetter Super 10					

Year	Policy 1	Policy 2	Policy 3	Policy 4	Policy 5	Policy 6
6	742,060.00	803,660.00	821,485.00	836,500.00	865,970.00	927,575.00
7	742,060.00	803,660.00	821,485.00	836,500.00	865,970.00	927,575.00
8	742,060.00	803,660.00	821,485.00	836,500.00	865,970.00	927,575.00
9	742,060.00	803,660.00	821,485.00	836,500.00	865,970.00	927,575.00
10	742,060.00	803,660.00	821,485.00	836,500.00	865,970.00	927,575.00
11	10,242,460.00	14,200,260.00	8,267,735.00	10,435,600.00	17,686,270.00	11,002,325.00
12	10,942,110.00	15,455,710.00	10,840,235.00	12,011,650.00	19,727,470.00	12,040,425.00
13	11,784,560.00	16,731,810.00	14,318,585.00	13,890,450.00	21,914,970.00	13,630,825.00
14	12,667,960.00	18,026,110.00	16,795,936.00	15,065,500.00	24,224,970.00	15,041,325.00
15	13,572,710.00	19,356,110.00	19,001,536.00	17,736,600.00	26,693,170.00	16,622,975.00
16	14,490,760.00	20,741,060.00	20,634,636.00	19,309,650.00	29,316,770.00	18,306,124.00
17	15,420,360.00	22,212,810.00	22,751,436.00	20,501,950.00	32,146,870.00	20,171,276.00
18	16,360,810.00	23,907,510.00	25,079,284.00	22,451,850.00	33,618,968.00	22,162,776.00
19	17,310,710.00	25,736,010.00	26,952,486.00	22,312,500.00	33,619,320.00	24,276,876.00
20	18,270,060.00	28,303,160.00	29,335,984.00	23,253,650.00	33,619,672.00	26,472,324.00

NOTE: Every effort has been made to assure the accuracy of this information but we cannot guarantee accuracy and are not liable for errors or omissions.



## Life Insurer Financial Profile

Company	Aflac	Transamerica	Travelers	N American	Banner	Midland
	Life	Occidental	Ins Co	Co L&H	Life	Life Ins
A.M. Best Company (Best Rating, 15 ratings)*	A+ (2)	A+ W (2)	A+ (2)	A (3)	A+ (2)	A (3)
Standard & Poor's (Financial Strength, 20 ratings)	AA+ (2)	AA+ (3)	AA (3)	AA (3)	BBB+ (9)	A+ (5)
Moody's (Financial Strength, 21 Ratings)	AA2 (2)	AA3 (4)	AA3 (4)	A2 (6)	A2 (6)	A+ (5)
Weiss Research (Safety Rating, 18 Ratings)	B+ (4)	B+ (4)	B- (6)	B- (6)	B- (6)	C+ (7)
Comdex (Percentile in Rated Companies)	85	80	88	78	74	77

\* These ratings reflect the opinions of the rating agencies and are not implied warranties of the company's ability to meet its contractual obligations. All ratings shown are current as of July 15, 1999.

\*\*Relative financial strength and operating performance in comparison with industry norms.

Total Admitted Assets	20,144,572	19,883,830	41,243,525	1,482,340	888,802	1,180,586
Total Liabilities	26,719,246	18,039,668	36,289,659	1,313,929	726,184	1,083,148
Separate Accounts	1,716,785	3,443,277	13,146,304	0	50,657	0
Total Surplus & AVR	2,788,864	2,244,778	5,329,564	191,959	165,963	123,660
As % of General Account Assets	10.2%	13.7%	19.0%	12.9%	18.8%	10.4%

Total Invested Assets	26,930,216	15,580,189	27,555,938	1,448,383	809,345	1,167,860
Bonds (%)	78.1%	77.9%	64.0%	78.5%	81.1%	69.5%
Stocks (%)	4.7%	11.8%	10.4%	7.8%	8.4%	0.7%
Mortgages (%)	11.8%	2.5%	9.4%	0.0%	0.1%	17.7%
Real Estate (%)	0.1%	0.7%	0.9%	0.0%	0.0%	0.2%
Policy Loans (%)	2.0%	2.8%	6.4%	4.9%	6.5%	8.7%
Cash & Short-Term (%)	1.6%	3.3%	4.1%	5.6%	2.8%	0.8%
Other Invested Assets (%)	0.8%	1.2%	4.0%	2.2%	0.0%	1.4%
Net Yield on Mean Invested Assets	7.32%	7.33%	7.08%	6.86%	6.57%	7.59%
1998 (Industry Average 7.43%)	7.71%	7.55%	7.41%	6.83%	6.78%	7.39%
5 Year Average (Industry Average 7.62%)						

Bonds in or Near Default	1.1%	0.0%	0.1%	0.0%	0.0%	1.0%
Problem Mortgages	1.4%	0.0%	4.9%	0.0%	0.0%	0.8%
Real Estate Acquired by Foreclosure	0.0%	0.0%	2.3%	0.0%	0.0%	1.4%
Total Non-Performing Assets	2.5%	0.0%	7.3%	0.0%	0.0%	3.1%
As a Percent of Invested Assets	0.3%	0.0%	1.4%	0.0%	0.0%	0.3%

Total Value of Bonds	21,639,464	12,708,185	18,980,906	1,237,802	688,398	828,104
Class 1-2: Highest Quality	92.6%	94.9%	89.8%	96.4%	98.3%	92.1%
Class 3-5: Lower Quality	7.2%	5.1%	10.4%	4.6%	0.7%	7.7%
Class 6: In or Near Default	0.1%	0.0%	0.0%	0.0%	0.0%	0.1%
Weighted Bond Class	1.4	1.4	1.5	1.3	1.1	1.4

Total Income	7,882,108	4,682,841	6,388,466	286,525	143,227	289,072
Net Premium Income	5,628,528	1,072,414	3,348,184	186,859	76,065	154,872
Earnings Before Dividends and Taxes	279,470	62,208	685,778	28,874	1,587	24,144
Net Operating Earnings	204,363	124,411	504,871	12,044	-2,621	14,170

Vintage Data for Year End 1998 from the life insurance companies' statutory annual statements. All dollar amounts are in thousands.